



Department of Defense  
**DIRECTIVE**

C, DoD

607-1370

(2)

**AD-A270 161**



January 2, 1985  
NUMBER 1340.16

ASD(C)

SUBJECT: Former Spouse Payments from Retired Pay

- References:
- (a) Title 10, United States Code, Section 1408 (Pub. L. 97-252, "Uniformed Services Former Spouses' Protection Act," September 8, 1982, as amended by Pub. L. 98-525)
  - (b) Title 42, United States Code, Section 662
  - (c) Title 28, United States Code, Section 451
  - (d) DoD 1340.12-M, "Military Retired Pay Manual," September 1979, authorized by DoD Instruction 1340.12, "Guidance for Military Retired Pay, Deductions, and Survivor Annuity Entitlements," January 23, 1978
  - (e) through (p), see enclosure 1

**A. PURPOSE**

Under reference (a), this Directive establishes policy and authorizes direct payments to a former spouse of a member from retired pay in response to court-ordered alimony, child support, or division of property.

**B. APPLICABILITY AND SCOPE**

1. This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Coast Guard (under agreement with the Department of Transportation), the Public Health Service (PHS) (under agreement with the Department of Health and Human Services); and the National Oceanic and Atmospheric Administration, (under agreement with the Department of Commerce). The term "Uniformed Services," as used herein, refers to the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned corps of the PHS, and the commissioned corps of the NOAA.

2. This Directive covers members retired from the active and reserve components of the Uniformed Services who are subject to court orders awarding alimony, child support, or division of property.

**C. DEFINITIONS**

Terms used in the Directive are defined in enclosure 2.

**D. POLICY**

It is the policy of the Uniformed Services to honor a former spouse's request for direct payment from a given member's retired pay in enforcement of a court order that provides for alimony, child support, or division of property, when the terms, conditions, and requirements in this Directive are satisfied.

DISTRIBUTION STATEMENT A

Approved for public release

Distribution Unlimited

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93-22937

#### E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Comptroller) shall establish policy and procedures, provide guidance, coordinate changes with the Uniformed Services, and monitor the implementation of this Directive within the Department of Defense.

2. The Secretaries of the Military Departments and Heads of the other Uniformed Services shall implement this Directive.

#### F. PROCEDURES

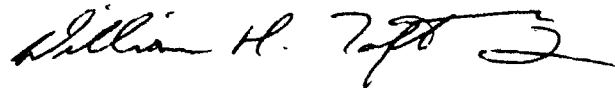
Detailed procedures for processing a court-ordered division of retired pay are at enclosure 3. The procedures define eligibility, give instructions on how to apply, identify the addressees for the Uniformed Services who will respond to inquiries, establish the terms and conditions necessary for enforcement of court orders and garnishment actions, set limits on payments to former spouses, give instructions on the notice to the member, qualify the liability of the designated agents, and specify the requirements for payment.

#### G. REPORTING REQUIREMENTS

The former spouse payments from retired pay application is assigned OMB Approval Number 0704-0182.

#### H. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of the implementing documents to the Assistant Secretary of Defense (Comptroller) within 120 days.



William H. Taft, IV  
Deputy Secretary of Defense

#### Enclosures - 3

1. References
2. Definitions
3. Procedures

Jan 2, 85  
1340.16 (Encl 1)

REFERENCES (continued)

- (e) Title 42, United States Code, Section 212
- (f) Office of Personnel Management Regulation, "Processing Garnishment Orders for Child Support and/or Alimony" (5 CFR Part 581)
- (g) Title 42, United States Code, Section 659
- (h) Title 10, United States Code, Chapter 61
- (i) Title 50, United States Code, Appendix, Section 501-591 (Act October 17, 1940, c.888, "Soldiers' and Sailors' Civil Relief Act of 1940")
- (j) Title 15, United States Code, Section 1673 (Pub. L. 90-321, "Consumer Credit Protection Act," (May 29, 1968) as amended)
- (k) Title 10, United States Code, Chapter 71
- (l) Title 10, United States Code, Chapter 73
- (m) Title 26, United States Code, Section 3402(i)
- (n) Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies
- (o) Title 33, United States Code, Section 864
- (p) Title 10, United States Code, Section 6323

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#### DEFINITIONS

1. Alimony. Periodic payments for the support and maintenance of a spouse or former spouse in accordance with state law under 42 U.S.C. 662(c) (reference (b)). It includes, but is not limited to, spousal support, separate maintenance, and maintenance. Alimony does not include any payment for the division of property.
2. Annuitant. A person receiving a monthly payment under a survivor benefit plan related to retired pay.
3. Child Support. Periodic payments for the support and maintenance of a child or children, subject to and in accordance with State law under 42 U.S.C. 662(b) (reference (b)). It includes, but is not limited to, payments to provide for health care, education, recreation, and clothing or to meet other specific needs of such a child or children.
4. Court. Any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and any court of the United States as defined in 28 U.S.C. 451 (reference (c)) having competent jurisdiction; or any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.
5. Court Order. As defined under 10 U.S.C. 1408(a)(2) (reference (a)), a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree. It includes a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree. The court order must provide for the payment to a member's former spouse of alimony, child support, or division of property. In the case of a division of property, the court order must specify that the payment is to be made from the member's disposable retired pay.
6. Creditable Service. Service counted towards the establishment of any entitlement for retired pay. See paragraphs 10102 through 10108 of DoD 1340.12-M (reference (d)), 42 U.S.C. 212 reference (e) for the PHS, and 33 U.S.C. 864 (reference (o)) and 10 U.S.C. 6323 (reference (p)) for NOAA.
7. Designated Agent. The representative of a Uniformed Service who will receive and process court orders under this Directive.
8. Division of Property. Any transfer of property or its value by an individual to his or her former spouse in compliance with any community property settlement, equitable distribution of property, or other distribution of property between spouses or former spouses.
9. Entitlement. The legal right of a member to receive retired pay.
10. Final Decree. As defined under 10 U.S.C. 1408(a)(3) (reference (a)), a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

11. Former Spouse. The former husband or former wife, or the husband or wife, of a member.
12. Garnishment. The legal procedure through which payment is made from an individual's pay that is due or payable to another party in order to satisfy a legal obligation to provide child support, to make alimony payments, or both, under 5 CFR Part 581 and 42 U.S.C. 659 (references (f) and (g)) or to enforce a division of property other than a division of retired pay as property under 10 U.S.C. 1408(d)(5) (reference (a)).
13. Member. A person originally appointed or enlisted in, or conscripted into, a Uniformed Service who has retired from the regular or reserve component of the Uniformed Service concerned.
14. Renounced Pay. Retired pay to which a member has an entitlement, but for which receipt of payment has been waived by the member.
15. Retired Pay. The gross entitlement due a member based on conditions of the retirement law, pay grade, years of service for basic pay, years of service for percentage multiplier, if applicable, and date of retirement (transfer to the Fleet Reserve or Fleet Marine Corps Reserve); also known as retainer pay. It does not include benefits paid to a member retired for disability under 10 U.S.C. Chapter 61 (reference (h)).

PROCEDURES

A. ELIGIBILITY OF FORMER SPOUSE

1. A former spouse of a member is eligible to receive direct payment from the retired pay of that member only pursuant to a court order that satisfies the requirements and conditions specified in this Directive. In the case of a division of property, the court order must specifically provide that payment is to be made from disposable retired pay.

2. For establishing eligibility for direct payment under a court order that provides for a division of retired pay as property, a former spouse must have been married to the member for 10 years or more, during which the member performed 10 years or more of creditable service. There is no 10-year marriage requirement for payment of child support, alimony, or both.

B. APPLICATION BY FORMER SPOUSE

1. A former spouse shall deliver to the designated agent of the member's Uniformed Service a signed DD Form 2293, Request for Former Spouse Payments from Retired Pay, or a signed statement that includes:

a. Notice to make direct payment to the former spouse from the member's retired pay.

b. A copy of the court order and other accompanying documents certified by an official of the issuing court that provides for payment of retired pay child support, alimony, or division of property.

c. A statement that the court order has not been amended, superseded, or set aside.

d. Sufficient identifying information about the member to enable processing of the application. The identification should give the member's full name, social security number, and Uniformed Service.

e. The full name, address, and social security number of the former spouse.

f. Before payment, the former spouse shall agree personally that any future overpayments are recoverable and subject to involuntary collection from the former spouse or his or her estate.

g. As a condition precedent to payment, the former spouse shall agree personally to notify the designated agent promptly if the operative court order upon which payment is based is vacated, modified, or set aside. This shall include notice of the former spouse's remarriage if all or a part of the payment is for alimony or notice of a change in eligibility for child support payments under circumstances of the death, emancipation, adoption, or attainment of majority of a child whose support is provided through direct payment to a former spouse from retired pay.

2. If the court order is for a division of retired pay as property and it does not state that the former spouse satisfied the eligibility criteria found

in subsection A.2., above, the former spouse shall furnish sufficient evidence for the designated agent to verify that the requirement was met.

3. The notification of the designated agent shall be accomplished by certified or registered mail, return receipt requested, or by personal service. Effective service is not accomplished until a complete application providing all information required by this Directive is received in the office of the designated agent, who shall note the date and time of receipt on the notification document.

4. Not later than 90 days after effective service, the designated agent shall respond to the former spouse as follows: (a) If the court order will be honored, the former spouse shall be informed of the date that payments tentatively begin; the amount of each payment; the amount of gross retired pay, total deductions, and disposable retired pay (except in cases where full payment of a court-ordered fixed amount will be made); and other relevant information, if applicable; or (b) If the court order will not be honored, the designated agent shall explain in writing to the former spouse why the court order was not honored.

5. The designated agent for each Uniformed Service is:

- a. Army: Commander  
Army Finance and Accounting Center  
ATTN: FINCL-G  
Indianapolis, IN 46249  
(317) 542-2155
- b. Navy: Director  
Navy Family Allowance Activity  
Anthony J. Celebrezze Federal Building  
Cleveland, OH 44199  
(216) 522-5301
- c. Air Force: Commander  
Air Force Accounting and Finance Center  
ATTN: JA  
Denver, CO 80279  
(303) 370-7524
- d. Marine Corps: Commanding Officer  
Marine Corps Finance Center (Code AA)  
Kansas City, MO 64197  
(816) 926-7103
- e. Coast Guard: Commandant (G-LGL)  
General Law Division  
United States Coast Guard Headquarters  
2100 2nd Street, S.W.  
Washington, D.C. 20593  
(202) 426-1553

Jan 2, 85  
1340.16 (Encl 3)

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|---|---|
| f. Public Health<br>Service:                              | Office of General Counsel<br>Department of Health and Human Services<br>Room 722A, Humphrey Building<br>200 Independence Avenue, S.W.<br>Washington, D.C. 20201<br>(202) 245-7741 |
| g. National Oceanic<br>and Atmospheric<br>Administration: | Director<br>Navy Family Allowance Activity<br>Anthony J. Celebrezze Federal Building<br>Cleveland, OH 44199<br>(216) 522-5301   |

6. U.S. Attorneys are not designated agents authorized to receive court orders or garnishments under this Directive.

C. REVIEW OF COURT ORDERS

1. The court order must be regular on its face, meaning that it is issued by a court of competent jurisdiction in accordance with the laws of the jurisdiction.

2. The court order must be legal in form and must include nothing on its face that provides reasonable notice that it is issued without authority of law. It is required that the court order be authenticated or certified within 90 days immediately preceding its service on the designated agent.

3. The court order must be a final decree.

4. If the court order was issued while the member was on active duty and the member was not represented in court, the court order or other court documents must certify that the rights of the member under the "Soldiers' and Sailors' Civil Relief Act of 1940" (reference (i)) were complied with.

5. Sufficient information must be contained in the court order to identify the member.

6. For court orders that provide for the division of retired pay as property, the following conditions apply:

a. The court must have jurisdiction over the member by reason of (1) the member's residence, other than because of military assignment in the territorial jurisdiction of the court; (2) the member's domicile in the territorial jurisdiction of the court; or (3) the member's consent to the jurisdiction of the court.

b. The treatment of retired pay as property solely of the member or as property of the member and the former spouse of that member must be in accordance with the law of the jurisdiction of such court.

c. The court order or other accompanying documents served with the court order must show the former spouse was married to the member 10 years or more, during which the member performed at least 10 years of creditable service.



7. Court orders awarding a division of retired pay as property that were issued before June 26, 1981, shall be honored if they otherwise satisfy the requirements and conditions specified in this Directive. A modification on or after June 26, 1981, of a court order that originally awarded a division of retired pay as property before June 26, 1981, may be honored for subsequent court-ordered changes made for clarification, such as the interpretation of a computation formula in the original court order. For court orders issued before June 26, 1981, subsequent amendments after that date to provide for a division of retired pay as property are unenforceable under this Directive. If the court order awarding a division of retired pay as property is issued on or after June 26, 1981, subsequent modifications of that court order shall be honored if they otherwise satisfy the requirements and conditions specified in this Directive.

8. In the case of a division of property, the court order must provide specifically for payment of a fixed amount expressed in U.S. dollars or payment as a percentage or fraction of disposable retired pay. Court orders specifying a percentage or fraction of retired pay shall be construed as a percentage or fraction of disposable retired pay. A court order that provides for a division of retired pay by means of a formula wherein the elements of the formula are not specifically set forth or readily apparent on the face of the court order will not be honored unless clarified by the court.

#### D. GARNISHMENT ORDERS

1. If a court order provides for the division of property other than retired pay in addition to an amount of disposable retired pay to be paid to the member's former spouse, the former spouse may garnish that member's retired pay in order to enforce the division of property. The limitations of 15 U.S.C. 1673 (a) (reference (j)) and the limitations of Section E. below, apply in determining the amount payable to a former spouse.

2. The designated agents authorized to receive service of process of garnishment orders under this Directive shall be those listed in Section B.5. above.

3. Garnishment orders under this Directive for enforcement of a division of property other than retired pay shall be processed in accordance with 5 CFR Part 581 (reference (f)) to the extent that the procedures are consistent with this Directive.

#### E. LIMITATIONS

1. Upon proper service, a member's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount paid does not exceed:

a. 50 percent of the disposable retired pay for all court orders and garnishment actions paid under this Directive.

b. 65 percent of the disposable retired pay for all court orders and garnishments paid under this Directive and garnishments under 42 U.S.C. 659 (reference (g)).

2. Disposable retired pay is the gross pay entitlement, including renounced pay, less authorized deductions. Disposable retired pay does not include the retired pay of a member retired for disability under 10 U.S.C. Chapter 61 (reference (h)) or annuitant payments under 10 U.S.C. Chapter 73 (reference (1)). The authorized deductions are:

- a. Amounts owed to the United States.
- b. Fines and forfeitures ordered by a court-martial.
- c. Amounts waived in order to receive compensation under title 5 or 38 of United States Code.
- d. Federal employment taxes and income taxes withheld to the extent that the amount deducted is consistent with the member's tax liability, including amounts for supplemental withholding under 26 U.S.C. 3402(i) (reference (m)), when the member presents evidence to the satisfaction of the designated agent that supports such withholding. State employment taxes and income taxes when the member makes a voluntary request for such withholding from retired pay and the Uniformed Services have entered into an agreement with the State concerned for withholding from retired pay.
- e. Premiums paid as a result of an election under 10 U.S.C. Chapter 73 (reference (1)) to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this Directive.
- f. Other amounts required by law to be deducted.

#### F. NOTIFICATION OF MEMBER

1. As soon as possible, but not later than 30 calendar days after effective service of a court order or garnishment action under this Directive, the designated agent shall send written notice to the affected member at his or her last known address.

2. This notice shall include:

- a. A copy of the court order and accompanying documentation.
- b. An explanation of the limitations placed on the direct payment to a former spouse from a member's retired pay.
- c. A request that the member submit notification to the designated agent if the court order has been amended, superseded, or set aside. The member is obligated to provide an authenticated or certified copy of the operative court documents when there are conflicting court orders.
- d. The amount or percentage that will be deducted if the member fails to respond to the notification as prescribed by this Directive.
- e. The effective date that direct payments to the former spouse tentatively will begin.

f. Notice that the member's failure to respond within 30 days from the date that the notice is mailed may result in the payment of retired pay as provided in the notification.

g. That if the member submits information in response to this notification, the member thereby consents to the disclosure of such information to the former spouse or the former spouse's agent.

3. If the member responds to the notification, the designated agent shall consider the response and will not honor the court order whenever it is shown that the court order is defective, or the court order is modified, superseded, or set aside.

#### G. DESIGNATED AGENT LIABILITY

1. The United States and any officer or employee of the United States will not be liable with respect to any payment made from retired pay to any member or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this Directive.

2. An officer or employee of the United States, who under this Directive has the duty to respond to interrogatories, will not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him or her in carrying out any of the duties that directly or indirectly pertain to answering such interrogatories.

3. If a court order on its face appears to conform to the laws of the jurisdiction from which it was issued, the designated agent will not be required to ascertain whether the court had obtained personal jurisdiction over the member.

4. Whenever a designated agent is effectively served with interrogatories concerning implementation of this Directive, the designated agent shall respond to such interrogatories within 30 calendar days of receipt or within such longer period as may be prescribed by applicable State law.

#### H. PAYMENTS

1. Subject to a member's eligibility for retired pay, effective service of a court order, and the limitations and requirements of this Directive, the Uniformed Service concerned shall begin payments to the former spouse not later than 90 days after the date of effective service.

2. Payments shall conform with the normal pay and disbursement cycle for retired pay. Payments may be expressed as fixed in amount or as a percentage or fraction of disposable retired pay. With regard to payments based on a percentage or fraction of disposable retired pay, the amount will change in direct proportion and at the effective date of future cost-of-living adjustments that are authorized, unless the court order directs otherwise.

3. Payments terminate on the date of the death of the member, death of the former spouse, or as stated in the applicable court order, whichever occurs first. Payments shall be terminated or shall be reduced upon the occurrence of a condition that requires termination or reduction under applicable State law.

4. When several court orders are served with regard to a member's retired pay, payment shall be satisfied on a first-come, first-served basis within the amount limitations prescribed in Section E. above.

5. If conflicting court orders are served on the designated agent that direct that different amounts be paid during a month to the same former spouse from a given member's retired pay, the designated agent shall authorize payment on the court order directing payment of the least amount. The difference in amounts on conflicting court orders shall be retained by the designated agent pending resolution by the court that has jurisdiction or by agreement of the parties. The amount retained shall be paid as provided in a subsequent court order or agreement. The total of all payments plus all moneys retained under this paragraph shall be within the limitation prescribed in Section E. above.

6. The designated agent shall comply with a stay of execution issued by a court of competent jurisdiction and shall suspend payment of disputed amounts pending resolution of the issue.

7. When service is made and the identified member is found not to be currently entitled to payments, the designated agent shall advise the former spouse that no payments are due from or payable by the Uniformed Service to the named individual. If the member is on active duty when service is accomplished, the designated agent shall retain the application until the member's retirement. In such case, payments to the former spouse, if otherwise proper, shall begin not later than 90 days from the date the member first becomes entitled to receive retired pay. If the member becomes entitled to receive retired pay more than 90 days after first being notified under Section F. above, the notification procedures prescribed by that Section shall be repeated by the designated agent.

8. If moneys are only temporarily exhausted or otherwise unavailable, the former spouse shall be fully advised of the reason or reasons why and for how long the moneys will be unavailable. Service shall be retained by the designated agent and payments to the former spouse, if otherwise proper, shall begin not later than 90 days from the date the member becomes entitled to receive retired pay. If the member becomes entitled to receive retired pay more than 90 days after first being notified under Section F. above, the notification procedures prescribed by that Section shall be repeated by the designated agent.

9. The order of precedence for disbursement of retired pay when the gross amount is not sufficient to permit all authorized deductions and collections shall follow Volume I, Part 3, Section 7040, "Order of Payment," in the Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies (reference (n)). Court-ordered payments to a former spouse from retired pay shall be enforced over voluntary deductions and allotments.

10. Payments made shall be prospective in terms of the amount stated in the court order. Arrearages will not be considered in determining the amount payable from retired pay.

11. No right, title, or interest that can be sold, assigned, transferred, or otherwise disposed of, including by inheritance, is created under this Directive.

12. At the request of the designated agent, the former spouse may be required to provide a certification of eligibility that attests in writing to the former spouse's continued eligibility and that includes a notice of change in status or circumstances that affect eligibility. After notice to the former spouse, payments to the former spouse may be suspended, or terminated, when the former spouse fails to comply, or refuses to comply, with the certification requirement.

#### I. RECONSIDERATION

A former spouse or member may request that the designated agent reconsider the designated agent's determination in response to service of an application for payments under this Directive or the member's answer to the designated agent with respect to notice of such service. For reconsideration, the request must express the issues the former spouse or the member believes were incorrectly resolved by the designated agent. The designated agent shall respond to the request for reconsideration, giving an explanation of the determination reached.

C, DoD  
667-1370

# DEPARTMENT OF DEFENSE DIRECTIVES SYSTEM TRANSMITTAL

NUMBER	DATE	DISTRIBUTION
1340.16, Ch 1	June 12, 1987	1300 series

## ATTACHMENTS

Pages 3-1 through 3-8

## INSTRUCTIONS FOR RECIPIENTS

The following pen and page changes to DoD Directive 1340.16, "Former Spouse Payments from Retired Pay," January 2, 1985, are authorized:

### PEN CHANGES

Page 1, reference (a). After "Pub. L. 98-525," insert "and Pub. L. 99-661"

Page 2-2, Definition 15. Retired Pay. Delete the last sentence (lines 5 and 6).

Changed portions are underscored.

### PAGE CHANGES

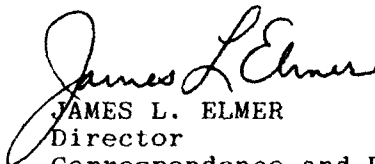
Remove: Enclosure 3 (pages 3-1 through 3-8)

Insert: Attached replacement pages 3-1 through 3-8

Changes on replacement pages are indicated by marginal asterisks.

### EFFECTIVE DATE

The above changes are effective immediately.

  
JAMES L. ELMER  
Director

Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

PROCEDURES

A. ELIGIBILITY OF FORMER SPOUSE

1. A former spouse of a member is eligible to receive direct payment from the retired pay of that member only pursuant to a court order that satisfies the requirements and conditions specified in this Directive. In the case of a division of property, the court order must specifically provide that payment is to be made from disposable retired pay.

2. For establishing eligibility for direct payment under a court order that provides for a division of retired pay as property, a former spouse must have been married to the member for 10 years or more, during which the member performed 10 years or more of creditable service. There is no 10-year marriage requirement for payment of child support, alimony, or both.

B. APPLICATION BY FORMER SPOUSE

1. A former spouse shall deliver to the designated agent of the member's Uniformed Service a signed DD Form 2293, Request for Former Spouse Payments from Retired Pay, or a signed statement that includes:

a. Notice to make direct payment to the former spouse from the member's retired pay.

b. A copy of the court order and other accompanying documents certified by an official of the issuing court that provides for payment of retired pay child support, alimony, or division of property.

c. A statement that the court order has not been amended, superseded, or set aside.

d. Sufficient identifying information about the member to enable processing of the application. The identification should give the member's full name, social security number, and Uniformed Service.

e. The full name, address, and social security number of the former spouse.

f. Before payment, the former spouse shall agree personally that any future overpayments are recoverable and subject to involuntary collection from the former spouse or his or her estate.

g. As a condition precedent to payment, the former spouse shall agree personally to notify the designated agent promptly if the operative court order upon which payment is based is vacated, modified, or set aside. This shall include notice of the former spouse's remarriage if all or a part of the payment is for alimony or notice of a change in eligibility for child support payments under circumstances of the death, emancipation, adoption, or attainment of majority of a child whose support is provided through direct payment to a former spouse from retired pay.

Jan 2, 85#  
1340.16 (Encl 3)

2. If the court order is for a division of retired pay as property and it does not state that the former spouse satisfied the eligibility criteria found in subsection A.2., above, the former spouse shall furnish sufficient evidence for the designated agent to verify that the requirement was met.

3. The notification of the designated agent shall be accomplished by certified or registered mail, return receipt requested, or by personal service. Effective service is not accomplished until a complete application providing all information required by this Directive is received in the office of the designated agent, who shall note the date and time of receipt on the notification document.

4. Not later than 90 days after effective service, the designated agent shall respond to the former spouse as follows: (a) If the court order will be honored, the former spouse shall be informed of the date that payments tentatively begin; the amount of each payment; the amount of gross retired pay, total deductions, and disposable retired pay (except in cases where full payment of a court-ordered fixed amount will be made); and other relevant information, if applicable; or (b) If the court order will not be honored, the designated agent shall explain in writing to the former spouse why the court order was not honored.

5. The designated agent for each Uniformed Service is:

	a. Army:	Commander Army Finance and Accounting Center ATTN: FINCL-G Indianapolis, IN 46249-0160 (317) 542-2155	*
*			
	b. Navy:	Director Navy Family Allowance Activity Anthony J. Celebrezze Federal Building Cleveland, OH 44199-2087 (216) 522-5301	*
*			
	c. Air Force:	Commander Air Force Accounting and Finance Center ATTN: JAL Denver, CO 80279-5000 (303) 370-7524	*
*			
	d. Marine Corps:	Commanding Officer Marine Corps Finance Center (Code AA) Kansas City, MO 64197-0001 (816) 926-7103	*
*			
*	e. Coast Guard:	United States Coast Guard Commanding Officer (L) Pay and Personnel Center 444 Quincy Street Topeka, KS 66683-3591 (913) 295-2517	*
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*	f. Public Health	Office of General Counsel	*
*	Service:	Department of Health and Human Services	*
*		Room 5362	*
*		330 Independence Avenue, S.W.	*
*		Washington, D.C. 20201	*
*		(202) 475-0153	*
*	g. National Oceanic	United States Coast Guard	*
*	and Atmospheric	Commanding Officer (L)	*
*	Administration:	Pay and Personnel Center	*
*		444 Quincy Street	*
*		Topeka, KS 66683-3591	*
*		(913) 295-2517	*

6. U.S. Attorneys are not designated agents authorized to receive court orders or garnishments under this Directive.

C. REVIEW OF COURT ORDERS

1. The court order must be regular on its face, meaning that it is issued by a court of competent jurisdiction in accordance with the laws of the jurisdiction.

2. The court order must be legal in form and must include nothing on its face that provides reasonable notice that it is issued without authority of law. It is required that the court order be authenticated or certified within 90 days immediately preceding its service on the designated agent.

3. The court order must be a final decree.

4. If the court order was issued while the member was on active duty and the member was not represented in court, the court order or other court documents must certify that the rights of the member under the "Soldiers' and Sailors' Civil Relief Act of 1940" (reference (i)) were complied with.

5. Sufficient information must be contained in the court order to identify the member.

6. For court orders that provide for the division of retired pay as property, the following conditions apply:

a. The court must have jurisdiction over the member by reason of (1) the member's residence, other than because of military assignment in the territorial jurisdiction of the court; (2) the member's domicile in the territorial jurisdiction of the court; or (3) the member's consent to the jurisdiction of the court.

b. The treatment of retired pay as property solely of the member or as property of the member and the former spouse of that member must be in accordance with the law of the jurisdiction of such court.

c. The court order or other accompanying documents served with the court order must show the former spouse was married to the member 10 years or more, during which the member performed at least 10 years of creditable service.

7. Court orders awarding a division of retired pay as property that were issued before June 26, 1981, shall be honored if they otherwise satisfy the requirements and conditions specified in this Directive. A modification on or after June 26, 1981, of a court order that originally awarded a division of retired pay as property before June 26, 1981, may be honored for subsequent court-ordered changes made for clarification, such as the interpretation of a computation formula in the original court order. For court orders issued before June 26, 1981, subsequent amendments after that date to provide for a division of retired pay as property are unenforceable under this Directive. If the court order awarding a division of retired pay as property is issued on or after June 26, 1981, subsequent modifications of that court order shall be honored if they otherwise satisfy the requirements and conditions specified in this Directive.

8. In the case of a division of property, the court order must provide specifically for payment of a fixed amount expressed in U.S. dollars or payment as a percentage or fraction of disposable retired pay. Court orders specifying a percentage or fraction of retired pay shall be construed as a percentage or fraction of disposable retired pay. A court order that provides for a division of retired pay by means of a formula wherein the elements of the formula are not specifically set forth or readily apparent on the face of the court order will not be honored unless clarified by the court.

#### D. GARNISHMENT ORDERS

1. If a court order provides for the division of property other than retired pay in addition to an amount of disposable retired pay to be paid to the member's former spouse, the former spouse may garnish that member's retired pay in order to enforce the division of property. The limitations of 15 U.S.C. 1673 (a) (reference (j)) and the limitations of Section E. below, apply in determining the amount payable to a former spouse.

2. The designated agents authorized to receive service of process of garnishment orders under this Directive shall be those listed in Section B.5. above.

3. Garnishment orders under this Directive for enforcement of a division of property other than retired pay shall be processed in accordance with 5 CFR Part 581 (reference (f)) to the extent that the procedures are consistent with this Directive.

#### E. LIMITATIONS

1. Upon proper service, a member's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount paid does not exceed:

a. 50 percent of the disposable retired pay for all court orders and garnishment actions paid under this Directive.

b. 65 percent of the disposable retired pay for all court orders and garnishments paid under this Directive and garnishments under 42 U.S.C. 659 (reference (g)).

2. Disposable retired pay is the gross pay entitlement, including renounced  
\* pay, less authorized deductions. Disposable retired pay does not include annui- \*  
\* tant payments under 10 U.S.C. Chapter 73 (reference (l)). For court orders \*  
\* issued on or before November 14, 1986 (or amendments thereto), disposable \*  
\* retired pay does not include retired pay of a member retired for disability \*  
\* under 10 U.S.C. Chapter 61 (reference (h)). The authorized deductions are: \*

a. Amounts owed to the United States.

b. Fines and forfeitures ordered by a court-martial.

c. Amounts waived in order to receive compensation under title 5 or  
38 of United States Code.

d. Federal employment taxes and income taxes withheld to the extent  
that the amount deducted is consistent with the member's tax liability, includ-  
ing amounts for supplemental withholding under 26 U.S.C. 3402(i) (reference (m)),  
when the member presents evidence to the satisfaction of the designated agent  
that supports such withholding. State employment taxes and income taxes when  
the member makes a voluntary request for such withholding from retired pay and  
the Uniformed Services have entered into an agreement with the State concerned  
for withholding from retired pay.

e. Premiums paid as a result of an election under 10 U.S.C. Chapter 73  
(reference (l)) to provide an annuity to a spouse or former spouse to whom pay-  
ment of a portion of such member's retired pay is being made pursuant to a court  
order under this Directive.

\* f. The amount of the member's retired pay under reference (h) computed \*  
\* using the percentage of the member's disability on the date when the member \*  
\* was retired (or the date on which the member's name was placed on the temporary \*  
\* disability retirement list), for court orders issued after November 14, 1986. \*

\* g. Other amounts required by law to be deducted. \*

#### F. NOTIFICATION OF MEMBER

1. As soon as possible, but not later than 30 calendar days after effec-  
tive service of a court order or garnishment action under this Directive, the  
designated agent shall send written notice to the affected member at his or  
her last known address.

2. This notice shall include:

a. A copy of the court order and accompanying documentation.

b. An explanation of the limitations placed on the direct payment to  
a former spouse from a member's retired pay.

c. A request that the member submit notification to the designated  
agent if the court order has been amended, superseded, or set aside. The  
member is obligated to provide an authenticated or certified copy of the oper-  
ative court documents when there are conflicting court orders.

d. The amount or percentage that will be deducted if the member fails to respond to the notification as prescribed by this Directive.

e. The effective date that direct payments to the former spouse tentatively will begin.

f. Notice that the member's failure to respond within 30 days from the date that the notice is mailed may result in the payment of retired pay as provided in the notification.

g. That if the member submits information in response to this notification, the member thereby consents to the disclosure of such information to the former spouse or the former spouse's agent.

3. If the member responds to the notification, the designated agent shall consider the response and will not honor the court order whenever it is shown that the court order is defective, or the court order is modified, superseded, or set aside.

#### G. DESIGNATED AGENT LIABILITY

1. The United States and any officer or employee of the United States will not be liable with respect to any payment made from retired pay to any member or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this Directive.

2. An officer or employee of the United States, who under this Directive has the duty to respond to interrogatories, will not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him or her in carrying out any of the duties that directly or indirectly pertain to answering such interrogatories.

3. If a court order on its face appears to conform to the laws of the jurisdiction from which it was issued, the designated agent will not be required to ascertain whether the court had obtained personal jurisdiction over the member.

4. Whenever a designated agent is effectively served with interrogatories concerning implementation of this Directive, the designated agent shall respond to such interrogatories within 30 calendar days of receipt or within such longer period as may be prescribed by applicable State law.

#### H. PAYMENTS

1. Subject to a member's eligibility for retired pay, effective service of a court order, and the limitations and requirements of this Directive, the Uniformed Service concerned shall begin payments to the former spouse not later than 90 days after the date of effective service.

2. Payments shall conform with the normal pay and disbursement cycle for retired pay. Payments may be expressed as fixed in amount or as a percentage or fraction of disposable retired pay. With regard to payments based on a percentage or fraction of disposable retired pay, the amount will change in direct proportion and at the effective date of future cost-of-living adjustments that are authorized, unless the court order directs otherwise.

3. Payments terminate on the date of the death of the member death of the former spouse, or as stated in the applicable court order, whichever occurs first. Payments shall be terminated or shall be reduced upon the occurrence of a condition that requires termination or reduction under applicable State law.

4. When several court orders are served with regard to a member's retired pay, payment shall be satisfied on a first-come, first-served basis within the amount limitations prescribed in Section E. above.

5. If conflicting court orders are served on the designated agent that direct that different amounts be paid during a month to the same former spouse from a given member's retired pay, the designated agent shall authorize payment on the court order directing payment of the least amount. The difference in amounts on conflicting court orders shall be retained by the designated agent pending resolution by the court that has jurisdiction or by agreement of the parties. The amount retained shall be paid as provided in a subsequent court order or agreement. The total of all payments plus all moneys retained under this paragraph shall be within the limitation prescribed in Section E. above.

6. The designated agent shall comply with a stay of execution issued by a court of competent jurisdiction and shall suspend payment of disputed amounts pending resolution of the issue.

7. When service is made and the identified member is found not to be currently entitled to payments, the designated agent shall advise the former spouse that no payments are due from or payable by the Uniformed Service to the named individual. If the member is on active duty when service is accomplished, the designated agent shall retain the application until the member's retirement. In such case, payments to the former spouse, if otherwise proper, shall begin not later than 90 days from the date the member first becomes entitled to receive retired pay. If the member becomes entitled to receive retired pay more than 90 days after first being notified under Section F. above, the notification procedures prescribed by that Section shall be repeated by the designated agent.

8. If moneys are only temporarily exhausted or otherwise unavailable, the former spouse shall be fully advised of the reason or reasons why and for how long the moneys will be unavailable. Service shall be retained by the designated agent and payments to the former spouse, if otherwise proper, shall begin not later than 90 days from the date the member becomes entitled to receive retired pay. If the member becomes entitled to receive retired pay more than 90 days after first being notified under Section F. above, the notification procedures prescribed by that Section shall be repeated by the designated agent.

9. The order of precedence for disbursement of retired pay when the gross amount is not sufficient to permit all authorized deductions and collections shall follow Volume I, Part 3, Section 7040, "Order of Payment," in the Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies (reference (n)). Court-ordered payments to a former spouse from retired pay shall be enforced over voluntary deductions and allotments.

10. Payments made shall be prospective in terms of the amount stated in the court order. Arrearages will not be considered in determining the amount payable from retired pay.

11. No right, title, or interest that can be sold, assigned, transferred, or otherwise disposed of, including by inheritance, is created under this Directive.

12. At the request of the designated agent, the former spouse may be required to provide a certification of eligibility that attests in writing to the former spouse's continued eligibility and that includes a notice of change in status or circumstances that affect eligibility. After notice to the former spouse, payments to the former spouse may be suspended, or terminated, when the former spouse fails to comply, or refuses to comply, with the certification requirement.

#### I. RECONSIDERATION

A former spouse or member may request that the designated agent reconsider the designated agent's determination in response to service of an application for payments under this Directive or the member's answer to the designated agent with respect to notice of such service. For reconsideration, the request must express the issues the former spouse or the member believes were incorrectly resolved by the designated agent. The designated agent shall respond to the request for reconsideration, giving an exp'ation of the determination reached.

# DEPARTMENT OF DEFENSE

## DIRECTIVES SYSTEM TRANSMITTAL

*C. DeB*  
*6-04-1376*

NUMBER	DATE	DISTRIBUTION
1340.16, Change 2	November 11, 1991	1000 Series

### ATTACHMENTS

None

### INSTRUCTIONS FOR RECIPIENTS

The following pen changes to DoD Directive 1340.16, "Former Spouse Payments from Retired Pay," January 2, 1985, are authorized:

### PEN CHANGES

#### Page 1

##### Header

Change "ASD(C)" to "C, DoD"

#### Page 2

Subsection E.1., line 1. Change "Assistant Secretary of Defense (Comptroller)" to "Comptroller of the Department of Defense"

Subsection H.1., line 2. Change "Assistant Secretary of Defense (Comptroller)" to "Comptroller of the Department of Defense"

#### Page 3-2

##### Paragraph B.5.a., Army:

Lines 1 through 5. Change to "Director, Defense Finance and Accounting Service, ATTN: DFAS-IN-REB, Indianapolis, IN 46249-1536, (317) 543-7119"

##### Paragraph B.5.c., Air Force:

Lines 1 through 3. Change to "Director, Defense Finance and Accounting Service, ATTN: DFAS-DE-GL"

Line 5. Change "370-7524" to "676-7524"

##### Paragraph B.5.d., Marine Corps:

Lines 1 and 2. Change to "Director, Defense Finance and Accounting Service, ATTN: DFAS-KC-AA"

Line 4. Change "7103" to 7130"

##### Paragraph B.5.e., Coast Guard:

Line 2. Change "(L)" to "(LGL)"

Line 6. Change "2517" to "2984"

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

NUMBER	DATE	DEPARTMENT OF DEFENSE DIRECTIVES SYSTEM TRANSMITTAL
1340.16, Change 2	November 11, 1991	

INSTRUCTIONS FOR RECIPIENTS (continued)

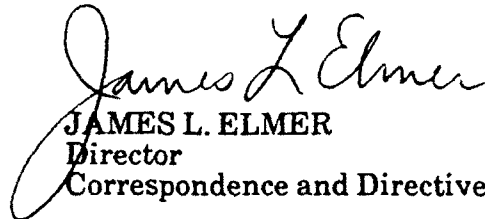
Page 3-3

Paragraph B.5.f. Public Health Service:  
Line 6. Change "475-0153" to "619-2155"

Paragraph B.5.g.  
Line 2. Change "(L)" to "(LGL)"  
Line 6. Change "2517" to "2984"

EFFECTIVE DATE

The above changes are effective immediately.

  
JAMES L. ELMER  
Director  
Correspondence and Directives